

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: PROCESSED EGG PRODUCTS
ANTITRUST LITIGATION

Docket No.: 2:08-md-02002-GEKP
MDL No. 2002

THIS DOCUMENT APPLIES TO:

ALL DIRECT ACTION PLAINTIFFS

**DIRECT ACTION PLAINTIFFS' REPLY MEMORANDUM IN SUPPORT OF
A PRETRIAL HEARING REGARDING THE ADMISSIBILITY OF
COCONSPIRATOR STATEMENTS**

Direct Action Plaintiffs ("DAPs"), submit this Reply Memorandum in Support of their Motion for a Pretrial Hearing regarding the Admissibility of Coconspirator Statements.

In their Response, the Defendants acknowledge that: "[t]wo basic procedural options exist for deciding whether the foundation requirements of Rule 801(d)(2)(E) have been satisfied." (Response at p. 2.) Although they specifically recognize that the options are *either* a pretrial "James" hearing or the conditional admission of the coconspirator evidence subject to that evidence being "connected up" with later proof at trial, the Defendants apparently oppose either approach here. *Id.* Instead, the Defendants merely submit that coconspirator statements should be ruled on in context during trial.

DAPs have argued that a James hearing would actually provide clarity in advance of trial and improve efficiency at trial. The Defendants oppose that pretrial hearing but still do not appear to endorse the Court conditionally admitting this coconspirator evidence, which would be the alternative procedural approach.

If the Court ultimately decides not to determine these issues in advance of trial through a James hearing, the DAPs respectfully request the Court order the conditional admission of this coconspirator evidence.

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CERTIFICATE OF SERVICE

I certify that on April 26, 2019, I caused a true and correct copy of the foregoing document to be filed and served via ECF on counsel for the parties.

By: /s/Douglas H. Patton